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REMARKS

Applicants thank the Examiner for examining the application. Applicants have added new claims 28-30. Support for new claims 28-30 may be found throughout the specification, and the addition of new claims 28-30 does not constitute the addition of new matter. With the amendment, claims 1-30 are now pending.

Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejected claims 1-3, 5-8, 10-20, 22-24, and 27 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2004/0250127 to Scoredos et al. in view of U.S. Patent No. 7,062,540 to Reddy et al.

Applicants' independent claim 1 requires, among other things, providing a connection database to store information about connection requests and associated application layer outcomes; providing a throttle filter using data from the connection database, the throttle filter to filter the connection request at the transport layer component; and applying the throttle filter to the received connection request. The Examiner cited to ¶ 0016 lines 1-4, ¶ 0016 lines 1-5, and ¶0016 lines 8-9 of Scoredos et al. as teaching or suggesting these elements.

However, neither the cited portions nor any other portions of Scoredos et al. and Reddy et al., alone or in combination, teach or suggest providing a connection database to store information about connection requests and associated application layer outcomes; providing a throttle filter using data from the connection database, the throttle filter to filter the connection request at the transport layer component; and applying the throttle filter to the received connection request, as required by Applicants' independent claim 1.

Regarding providing a connection database to store information about connection requests and associated application layer outcomes, the text of Scoredos et al. ¶ 0016 lines 1-4 reads as follows:

> Firewall 100 analyzes inbound TCP/IP connection request packets, using a table of rules 105 to determine how many concurrent connections 106 a particular source IP, destination IP, and destination TCP port 110 should be allowed.

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The Examiner goes on to state in the office action that "table of rules can be a database", Office Action page 2. Applicants do not dispute that, in certain circumstances, a table of rules may be considered a database. However, Applicants' independent claim 1 requires that a connection database be provided **to store information about connection requests** (emphasis added). Even if Applicants were to accept the Examiner's premise, that a table of rules may be a database, the table of rules that is actually taught by Scoredos et al. does not store information about connection requests. Rather, the table of rules taught by Scoredos et al. is used to "determine how many concurrent connections 106 a particular source IP, destination IP, and destination TCP port 110 should be allowed," Scoredos et al. ¶ 0016 lines 2-4. In other words, the table of rules taught by Scoredos et al. tells the firewall 100 of Scoredos et al. what actions to take, and do not store any information. This is in direct contrast to Applicants' connection database, in which information about connection requests is stored, as required by Applicants' independent claim 1. For this reason alone, Applicants' independent claim 1 is allowable over Scoredos et al.

Regarding providing a throttle filter using data from the connection database, the throttle filter to filter the connection request at the transport layer component; and applying the throttle filter to the received connection request, the text of Scoredos et al. ¶ 0016 states as follows:

> Firewall 100 analyzes inbound TCP/IP connection request packets, using a table of rules 105 to determine how many concurrent connections 106 a particular source IP, destination IP, and destination TCP port 110 should be allowed. IP packets are then forwarded, via switch 123 on the outbound interface, to server 108. DCA Firewall 100 comprises a filter 101 that includes filtering functions executed on processor 112, including a connection limit checking function ['fn limit_check( )'] 109 that uses associated files and tables 102-105 stored in processor-accessible memory.

In other words, the filter 101 taught by Scoredos et al. describes filtering based on the number of **concurrent** – that is, simultaneously existing in the present time – connections. Indeed, Scoredos et al. is entirely focused on ways to limit the number of simultaneous currently existing connections allowed between an IP entity and a server;

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see at least ¶ 0006, ¶ 0017 lines 1-3 ("DCA firewall 100 limits the number of connections that an IP entity (e.g., a client or subnet), can make concurrently to a server"), ¶ 0035, ¶ 0041, and ¶ 0042. This is in direct contrast to the throttle filter required by Applicants' independent claim 1. In addition to the filter taught by Scoredos et al. being unable to use data from the connection database as required by Applicants' independent claim 1, because as described above, Scoredos et al. does not teach a connection database. the throttle filter required by Applicants' independent claim 1 makes use of data regarding **past** connection requests, not current connection requests as taught by Scoredos et al. This is made quite clear in Applicants' specification, which states that a "throttle filter is a list of client identifiers for clients to be blocked based on the application layer outcome (e.g. the HTTP or HTTPS connection success or failure) of **past** connection requests," Specification page 6 lines 5-7 (emphasis added); *see also* Specification page 12 lines 16-26. While Applicants acknowledge that is not proper to read limitations from the specification to the claims, Applicants also note that according to the 2005 decision of the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303, the claims are first interpreted according to their plain meaning, particularly if there is a meaning well-known in the art, but if there is ambiguity in the language and the plain meaning of a word or phrase is unclear, the specification may be used to shed light on the meaning of the claim terms, and that other claims may also be used to inform the meaning of a claimed phrase. In this case, the term "throttle filter" is not a well-known term in the art, and thus it is appropriate to look to the specification to shed light on the meaning of "throttle filter". Further, Applicants' dependent claims 5-7 all further require the throttle filter to use data from past connection requests. (Applicants also note that new claims 28-30 explicitly require that the throttle filter uses data from past connection requests.) For this reason alone, Scoredos et al. does not teach or suggest Applicants' independent claim 1.

Finally, as the Examiner knows, to make a *prima facie* case of obviousness requires, among other things, that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary

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skill in the art, to modify the reference or to combine reference teachings", MPEP §
2143. As MPEP § 2143.01 goes on to state, "The teaching, suggestion, or motivation
must be< found either explicitly or implicitly in the references themselves or in the
knowledge generally available to one of ordinary skill in the art. "The test for an implicit
showing is what the combined teachings, knowledge of one of ordinary skill in the art,
and the nature of the problem to be solved as a whole would have suggested to those
of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317
(Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-
34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and
making specific factual findings with respect to the motivation to combine references); *In
re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21
USPQ2d 1941 (Fed. Cir. 1992). . . . The mere fact that references can be combined or
modified does not render the resultant combination obvious unless the prior art also
suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430
(Fed. Cir. 1990) (Claims were directed to an apparatus for producing an aerated
cementitious composition by drawing air into the cementitious composition by driving
the output pump at a capacity greater than the feed rate. The prior art reference taught
that the feed means can be run at a variable speed, however the court found that this
does not require that the output pump be run at the claimed speed so that air is drawn
into the mixing chamber and is entrained in the ingredients during operation. Although a
prior art device "may be capable of being modified to run the way the apparatus is
claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d
at 682, 16 USPQ2d at 1432.)."

The Examiner states that it would be desirable to combine "in order to
authenticate the remote user to access, monitor, or execute the application through
monitoring software based on users build up profile kept in the databases in the
appropriate domain", Office Action page 2. However, the Examiner fails to indicate
where in either reference, Scoredos et al. or Reddy et al., that this motivation comes
from, or if the motivation is implicit, why according to one or both of the references that
this combination is desirable. Indeed, neither reference includes such a suggestion for

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this motivation. Applicants therefore respectfully submit that the motivation to combine Scoredos et al. with Reddy et al., as provided by the Examiner, is improper, and that for this reason alone, the rejection is overcome.

Thus, for any of the reasons gives above, Scoredos et al. does not teach or suggest Applicants' independent claim 1. Applicants' independent claim 1 is therefore allowable over Scoredos et al., and thus is also allowable over Scoredos et al. in combination with Reddy et al.

Applicants' independent claims 12 and 27 include limitations similar to those of Applicants' allowable independent claim 1. Therefore, for at least the reason(s) given above with regards to Applicants' allowable independent claim 1, Applicants' independent claims 12 and 27 are themselves not obvious in light of Scoredos et al. in view of Reddy et al., and thus, Applicants' independent claims 12 and 27 are allowable over the combination of Scoredos et al. with Reddy et al.

Applicants' dependent claims 2-3, 5-8, 10-11, 13-20, and 22-24 depend from, respectively, Applicants' allowable independent claims 1 and 12. Therefore, for at least the reason(s) given above with regards to Applicants' allowable independent claims 1 and 12, Applicants' dependent claims 2-3, 5-8, 10-11, 13-20, and 22-24 are themselves not obvious in light of Scoredos et al. in view of Reddy et al., and thus, Applicants' dependent claims 2-3, 5-8, 10-11, 13-20, and 22-24 are allowable over the combination of Scoredos et al. with Reddy et al.

The Examiner next rejected claims 9, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Scoredos et al. in view of Reddy et al. and further in view of U.S. Published Patent Application No. 2002/0124103 to Maruyama et al.

Applicants' dependent claim 9 depends from Applicants' allowable independent claim 1. Therefore, for at least the reasons given above with regards to Applicants' allowable independent claim 1, Applicants' dependent claim 9 is itself not obvious in

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light of Scoredos et al. in view of Reddy et al. Thus, Applicants' dependent claim 9 is itself not obvious in light of Scoredos et al. in view of Reddy et al. and further in view of Maruyama et al., and so Applicants' dependent claim 9 is allowable over the combination of Scoredos et al. with Reddy et al. and with Maruyama et al.

Applicants' independent claims 25 and 26 include limitations similar to those of Applicants' allowable independent claims 1, 12, and 27. Therefore, for at least the reason(s) given above with regards to Applicants' allowable independent claims 1, 12, and 27, Applicants' independent claims 25 and 26 are themselves not obvious in light of Scoredos et al. in view of Reddy et al., and thus, Applicants' independent claims 25 and 26 are allowable over the combination of Scoredos et al. with Reddy et al.

Finally, the Examiner rejected claims 4 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Scoredos et al. in view of Reddy et al. and further in view of U.S. Published Patent Application No. 2003/0212821 to Gillies et al.

Applicants' dependent claims 4 and 21 depend from Applicants' allowable independent claims 1 and 12. Therefore, for at least the reasons given above with regards to Applicants' allowable independent claims 1 and 12, Applicants' dependent claims 4 and 21 are themselves not obvious in light of Scoredos et al. in view of Reddy et al. Thus, Applicants' dependent claims 4 and 21 are themselves not obvious in light of Scoredos et al. in view of Reddy et al. and further in view of Gillies et al., and so Applicants' dependent claims 4 and 21 are allowable over the combination of Scoredos et al. with Reddy et al. and with Gillies et al.

CONCLUSION

Applicants believe this Amendment and Response to be fully responsive to the present Office Action. Thus, based on the foregoing Remarks, Applicants respectfully submit that this application is in condition for allowance. Accordingly, Applicants request allowance of the application.

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Applicants hereby petition for any extension of time required to maintain the pendency of this case. If there is any fee occasioned by this response that is not paid, please charge any deficiency to Deposit Account No. 50-3735.

Should the enclosed papers or fees be considered incomplete, Applicants respectfully request that the Patent Office contact the undersigned collect at the telephone number provided below.

Applicants invite the Examiner to contact the Applicants' undersigned Attorney if any issues are deemed to remain prior to allowance.

Respectfully submitted,

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Dated: